

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

UGOCHUKWO GOODLUCK NWAUZOR,
et al.,

Plaintiffs,

v.

THE GEO GROUP, INC.,

Defendant.

3:17-cv-05769-RJB

3:17-cv-05806-RJB

Tacoma, Washington

October 21, 2021

STATE OF WASHINGTON,

Plaintiff,

Jury Trial

9:00 a.m.

v.

THE GEO GROUP, INC.,

Defendant.

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE ROBERT J. BRYAN
UNITED STATES DISTRICT JUDGE

Proceedings stenographically reported and transcribed
With computer-aided technology

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1 the work you and your employees do at the Northwest ICE
2 Processing Center?

3 A I and my employees take great pride in what we do. We
4 take great pride in our audits and accreditations that have
5 shown the good work that we have done over time, as witnessed
6 by many people that have visited the facility over the years,
7 congressmen, everybody.

8 We train hard, we know the standards, we respect the
9 dignity and right of those contained in our care. We do the
10 best we can to manage the time while they are there for the
11 federal government and hope that they get released quickly to
12 whatever adjudicates -- to however the federal government
13 adjudicates their case and gets them either released or back
14 to their families in the quickest, most safe and humane way
15 possible.

16 MR. CALABRESE: Thank you, Mr. Scott.

17 No further questions, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. WHITEHEAD:

20 Q Mr. Scott, a lot of ground was covered. I would like to
21 start with Exhibit A-302. This was the ledger for the class
22 representative, Mr. Goodluck Nwauzor.

23 If I understood your testimony correctly, you said that
24 Mr. Nwauzor began working November 11th, 2016. I believe
25 that is page two of the document. Do you see that there? I

1 think the line you were referring to is the one noted for
2 November 11th.

3 A I see that line as the first time we have a deposit into
4 his account.

5 Q And each of those deposits, though, represent a shift or
6 work performed by Mr. Nwauzor, correct?

7 A I don't really consider it a shift. It is the detail that
8 he performed that day, one dollar per day.

9 Q Each of those entries represents a detail that he worked,
10 correct?

11 A I would agree with that.

12 Q If we could clear the callout. I would like for you to
13 tell me how many work details Mr. Goodluck Nwauzor missed
14 once he began working the month of November?

15 A It looks like Mr. Goodluck was pretty consistent. I see a
16 dollar for each day. It looks like he performed that task
17 seven days a week.

18 Q He worked every day, just like he testified, correct?

19 A It appears to.

20 Q Including Thanksgiving?

21 A Daughter was born on the 24th. I don't know the date
22 Thanksgiving was that year. But in the time period that's
23 here, it looks like Thanksgiving was covered.

24 Q Did you work on Thanksgiving 2016?

25 MR. CALABRESE: Objection, Your Honor, form,

1 argumentative.

2 THE WITNESS: I --

3 THE COURT: Sustained.

4 BY MR. WHITEHEAD:

5 Q Let's take a look at the month of December for
6 Mr. Nwauzor.

7 If we could clear the callout? We might have to look
8 at page two. The entries begin there. And this is in
9 reverse chrono order. So his first December entry there is
10 at the top of page two. Do you see it?

11 A I do.

12 Q Let's continue to the next page. My question is this:
13 How many days of work did Mr. Nwauzor perform for the month
14 of December 2016?

15 A It looks like he did all the days. I think he's probably
16 one of those detainees that take great pride in what he does.

17 Q He worked every day, just like he testified, correct?

18 A It would appear to.

19 Q Including Christmas day?

20 A Yes.

21 Q Did you work Christmas day?

22 MR. CALABRESE: Objection, Your Honor, same
23 objection.

24 THE COURT: Sustained.

25 MR. CALABRESE: Different holidays.

1 BY MR. WHITEHEAD:

2 Q What do you call someone that performs a task for money?

3 A That is really vague. It could be a volunteer. There are
4 so many different ways that could go.

5 Q Let's go to Exhibit 35. I think that is one of the
6 exhibits that was brought up. This is one of the ACA books.
7 Let's start on page 3 of the document.

8 Now, that first sentence there, it reads that the
9 Northwest Detention Center is a privately owned and operated
10 detention facility. Did I read that correctly?

11 A You did.

12 Q And that's because the Northwest Detention Center is
13 privately owned and operated?

14 A In accordance with the contract with the federal
15 government.

16 Q Well, this paragraph that we are looking at says nothing
17 about that, correct?

18 A Well, this paragraph, annual report, no. This is
19 summary.

20 Q I would like to look at page 12 of this report. Perhaps
21 we will go up one page to page 11. This section deals with
22 classifications, correct?

23 A I see that section.

24 Q Okay. Let's continue on to the next page. At the top,
25 what does it have to say about detainee classifications at

1 the center as of the date of this report?

2 A The date of the report, it breaks out, it looks like,
3 totality of the detainee classifications of those years by
4 the percentage of what were in each of those classifications.

5 Q And less than ten percent of the detainee population, as
6 of the date of this report, was classified as high level,
7 high security, correct?

8 A Less than ten percent during that time.

9 Q Now, no one forces GEO -- we can clear the exhibit.

10 No one forces GEO to enter contracts with ICE, correct?

11 A I don't think anybody forces you to enter into a contract.

12 Q That's right. And GEO wasn't conscripted; the
13 United States Government didn't say, GEO, you will perform
14 this task for us, correct?

15 A I agree with that.

16 Q GEO, we saw the contract earlier, and you told me that it
17 was a partnership-type relationship, correct?

18 A I didn't say it was a partnership, but there's a definite
19 who is the client and who is the contractor.

20 Q And GEO enters a relationship because it is a beneficial
21 relationship for GEO, correct?

22 A Well, I would surmise. I am not the contracting officer
23 for GEO to do that. I come way down at the low level and
24 just manage contracts. I don't get involved in that
25 upper-end stuff.

1 Q Sir, you were just testifying about the upper-end stuff..
2 I think the question is a straightforward one. GEO enters --

3 MR. CALABRESE: Objection, Your Honor, form and the
4 argumentative nature of the question.

5 MR. WHITEHEAD: Let me finish the question.

6 MR. CALABRESE: The part I objected to was completed.

7 BY MR. WHITEHEAD:

8 Q GEO enters these contracts --

9 THE COURT: Just a minute. Let me rule on the
10 objection.

11 Rephrase the question.

12 BY MR. WHITEHEAD:

13 Q GEO enters contracts with ICE because it is beneficial for
14 GEO?

15 A Well, I think one of GEO's core tenants is to provide
16 world-class services to the United States Government. I
17 think that would be one of the purer things of why GEO does
18 that. Is there a benefit? I would say yes.

19 Q GEO derives a benefit, correct?

20 A By performance of the service. I think the real benefit
21 is to the United States Government that has requested these
22 services and asked for somebody to do all of these things. I
23 think really the benefit and service of this country is to
24 the United States of America.

25 Q Now, ICE delegates to GEO certain functions under the

1 contract in performing Detention Management Services,
2 correct?

3 A ICE requires us to do certain functions, as we have seen
4 in the contract and the Performance-Based National Detention
5 Standards.

6 Q And we have heard about ICE's reliance upon GEO to perform
7 under this contract, correct?

8 A ICE and Homeland Security, as the people that have the
9 contract, I would agree.

10 Q We have heard about GEO's discretion within the
11 performance of these Detention Management Services and that
12 discretion abounds, correct?

13 A I don't think there's -- there is not a lot of discretion.
14 We have to follow the standards. Where facility
15 differences -- like I explained earlier, facility
16 differences, that's where some of those local supplements
17 come in, the availability to work the program that's audited
18 by the government to make sure that we do what we are
19 supposed to do.

20 Q Well, you heard Mr. McHatton's testimony about how he
21 created a document called "Detainee Selection Criteria."
22 That was GEO, not ICE, correct?

23 A That is a part of managing a program using similar
24 language that people are accustomed to understanding. But I
25 don't think it draws any inference to the true meaning of

1 those words.

2 Q And we heard testimony from Ms. Singleton and Mr. Heye,
3 GEO's classification officers, about how it is GEO's officers
4 that make the work assignments, correct?

5 A I won't say "make the work assignments." The work plan
6 that we are supposed to do by -- as called out by the
7 standard, which is a requirement, and who does that? My
8 staff make that work plan, but it is all permitted by the
9 government.

10 Q GEO's staff creates the work rosters, correct?

11 A This is part of that work plan to make sure that we manage
12 all of those different competing requirements in a day to
13 make sure everything happens.

14 Q And you heard testimony from Ms. Singleton that detainee
15 workers sometimes work three kitchen details. Did you hear
16 that?

17 A I heard that, but I don't believe that to be factually
18 true. We could look at those documents again. I think there
19 were some date differences on some of those documents. I
20 don't believe that to be true.

21 Q When Ms. Singleton testified about that being a practice
22 at the Northwest Detention Center, she was talking from her
23 experience as a classification officer for GEO, correct?

24 MR. CALABRESE: Your Honor, we are going to object to
25 this line of questioning about another witness so

1 extensively. It is almost as though he is using another
2 witness's testimony to impeach this witness.

3 MR. WHITEHEAD: Your Honor, this is testimony that
4 was elicited at trial, it's evidence in the case. Mr. Scott
5 is sitting here as the corporate designee. He's heard
6 everything. They have used him to rebut much of the
7 testimony that was offered by previous GEO employees.

8 THE COURT: The objection is overruled.

9 THE WITNESS: I would like the question repeated,
10 please.

11 BY MR. WHITEHEAD:

12 Q Ms. Singleton, when she talked about GEO's practice of
13 allowing workers to work sometimes three kitchen shifts a day
14 at the Northwest Detention Center, she was talking about this
15 practice that occurred while she was a classification officer
16 at the center, correct?

17 A The last time I heard. But, to my knowledge, reviewing
18 the documentation, I know we have allowed detainees to do two
19 shifts a day as long as they do not work past the eight hours
20 a day in one day, per the standard. I can understand that
21 happening. Three shifts a day, I can't speak to that without
22 actually looking and reviewing some documentation.

23 Q And working more than three shifts a day in the kitchen,
24 that would violate parts of the Performance-Based National
25 Detention Standards, correct?

1 A It would. But to my knowledge, we don't have any
2 violations. And of the many audits throughout the many years
3 they have reviewed us in great detail, I think that would
4 have been found.

5 Q Well, sir, you are offering your knowledge, but --

6 THE COURT: Just a second, counsel.

7 Mr. Scott, it would be better if you just answered the
8 questions asked.

9 THE WITNESS: Yes, sir.

10 THE COURT: If an explanation is asked, fine. If it
11 is not asked, you don't volunteer it. Okay?

12 THE WITNESS: Yes, sir.

13 BY MR. WHITEHEAD:

14 Q Working more than three kitchen details in a day would
15 violate the Performance-Based National Detention Standards,
16 correct?

17 A If we looked at --

18 Q I phrased the question --

19 MR. CALABRESE: Objection, Your Honor. He's trying
20 to answer the question.

21 BY MR. WHITEHEAD:

22 Q -- as a yes-or-no question.

23 MR. CALABRESE: It doesn't call necessarily for a yes
24 or no.

25 MR. WHITEHEAD: The witness may answer no if that's

1 the case. But my question is phrased as --

2 THE COURT: The objection is overruled.

3 BY MR. WHITEHEAD:

4 Q This is a yes-or-no question, and I will put it to you
5 again, sir: Working more than three kitchen details in a day
6 would violate the Performance-Based National Detention
7 Standards, correct?

8 A If they went past eight hours.

9 Q Now, you heard Ryan Kimble testify that some detainees
10 work more than one job a day?

11 A That's correct.

12 Q You are aware that some detainees worked more than one job
13 a day and that would violate the Performance-Based National
14 Detention Standards, correct?

15 A It would, but we talked about we had --

16 Q It's one of those yes-or-no questions. Working more than
17 one job a day would violate the Performance-Based National
18 Detention Standards, correct?

19 A By that singular line, without any definition of what
20 actually happened, yes.

21 Q Now, you told us earlier in the week that you are GEO's
22 top employee at the detention center, correct?

23 A Yes.

24 Q You are a salaried employee?

25 A Yes.

1 Q That means you are being paid to testify right now,
2 correct?

3 A I get paid a salary, sir.

4 Q You have been designated as the company's corporate
5 representative?

6 A Correct.

7 Q And you have accepted this role?

8 A Yes.

9 Q It's because you want to help, correct?

10 A I do the best I can to serve my country.

11 Q Now, you have testified -- there has been testimony that
12 the Northwest Detention Center is a well-monitored facility.
13 I think that was yesterday. Do you recall?

14 A Yes.

15 Q And you said that the detention center was audited
16 frequently. Did I get that right?

17 A Correct.

18 Q I believe you said that all audit reports went by your
19 desk?

20 A Correct.

21 Q And some of those reports, they turned out just fine,
22 correct?

23 A Many do.

24 Q GEO's facility is found to be in compliance with whatever
25 is being audited?

1 A I do not recall a report that ever said we were not in
2 compliance with a standard.

3 Q Is it your testimony that GEO has never received an audit
4 finding that it was out of compliance with the
5 Performance-Based National Detention Standards?

6 A No, I can't say that. When it comes to auditing, there is
7 findings. That doesn't necessarily mean that the auditor is
8 finding you out of compliance with the entire standard. But
9 there is report findings sometimes that we talk about
10 corrective action plans. We have talked about stuff like
11 that.

12 Q That's right, you couldn't say that because it wouldn't be
13 true. GEO --

14 MR. CALABRESE: Objection, Your Honor. He's
15 testifying.

16 BY MR. WHITEHEAD:

17 Q GEO has been found to be out of compliance with the
18 performance-based --

19 MR. CALABRESE: Your Honor, I made an objection.

20 THE COURT: Just a minute, counsel.

21 Rephrase the question.

22 BY MR. WHITEHEAD:

23 Q GEO has been found to be out of compliance with the
24 Performance-Based National Detention Standards in years past
25 audits, correct?

1 A I wouldn't consider that to be a true statement.

2 Q I'm sorry. You would consider that to be true?

3 A I would not.

4 Q What is the Office of the Inspector General for the
5 Department of Homeland Security?

6 A It is an office that resides in its own hierarchy chain of
7 command. Like any type of inspector general, they come down
8 and they have been to the facility multiple times.

9 Q Now, the Office of Inspector General, it is a Department
10 of Homeland Security but separate and apart from ICE,
11 correct?

12 A My understanding.

13 Q Now, you're aware that the office of the inspector general
14 of the Department of Homeland Security inspected the
15 detention center in 2019, correct?

16 A They have come a few times. I don't have any reason to
17 believe they didn't come in 2019.

18 Q In the 2019 inspection, it was unannounced, correct?

19 A They have the ability to do unannounced inspections.

20 Q The unannounced inspections, they are a tool that
21 inspectors use to see what a facility is like as-is, correct?

22 A A tool?

23 Q Tool.

24 A It is a requirement of the contract that we get
25 unannounced and announced inspections.

1 Q Well, unannounced visitors doesn't give you an opportunity
2 to tidy up, so to speak, correct?

3 MR. CALABRESE: Objection, form of the question.

4 THE COURT: He may answer.

5 THE WITNESS: We run a facility, day in and day out
6 operations. We like to say we are always audit ready, but
7 unannounced inspections come by.

8 BY MR. WHITEHEAD:

9 Q Sir, isn't it true the Office of Inspector General found
10 GEO staff at the Northwest Detention Center had a policy of
11 placing physical restraints on detainees in the segregation
12 unit that did not comply with ICE standards?

13 MR. CALABRESE: Your Honor, we are definitely
14 objecting to this sort of introduction or request for
15 testimony on something totally irrelevant to the case before
16 the Court.

17 MR. WHITEHEAD: Your Honor --

18 MR. CALABRESE: Inappropriate.

19 MR. WHITEHEAD: We have sat through a day of
20 testimony about audit reports.

21 THE COURT: The objection is overruled.

22 THE WITNESS: I do recall that there being a change.
23 If we looked at the standard, this gets very involved. I
24 don't want to --

25

1 BY MR. WHITEHEAD:

2 Q This is one of those yes-or-no questions again. Isn't it
3 true that the Office of Inspector General found that GEO
4 staff, at the Northwest Detention Center, had a policy of
5 placing physical restraints on detainees in the segregation
6 unit that did not comply with ICE standards?

7 A It is a little bit more involved than that. I believe
8 that was their finding.

9 Q Let's take a look at the report. Can we get Exhibit 614,
10 please.

11 Sir, this is the Office of Inspector General's report,
12 correct?

13 A I see an overall capping report. Looks like many
14 different facilities in 2019.

15 Q I don't want to ask you about any other facilities. I am
16 only going to restrict my questions to you, sir, of the
17 facility that you operate. Understood?

18 A Yeah.

19 Q I would like to go -- I would like to scroll through the
20 document, if we could, just scroll through the pages here.
21 Sir, you told us earlier that all audit reports come across
22 your desk. Is this one of the audit reports that came across
23 your desk, yes or no?

24 A I do remember seeing it. I was not in the facility --
25 what date was this report? 2019? July 1, 2020. Yeah.

1 Q When did you become a facility administrator?

2 A February of this year.

3 Q I think we have scrolled all the way through.

4 MR. WHITEHEAD: Your Honor, we offer Exhibit 614 into
5 evidence. This is a document that meets the hearsay
6 exception under Rule 803(a) -- 8, as a public record, self
7 authenticates under 902(a) as a government report. In
8 addition, we are offering this as rebuttal evidence.

9 MR. CALABRESE: Your Honor, GEO objects. This report
10 and this inspection had to do with apparently with restraints
11 in the segregation unit. Nothing to do whatsoever with
12 respect to the voluntary work program or the detainees in it.
13 It is irrelevant. It is hearsay. It is not covered by the
14 exceptions properly. It does not speak for itself.

15 THE COURT: I think it has a lot of information in it
16 that is not relevant, along with what is relevant. I think
17 it should not be admitted in its present form.

18 MR. WHITEHEAD: Your Honor, I think that we can
19 address that through a series of redactions. As I have
20 stated to the witness, my only concern is the Northwest
21 Detention Center.

22 Your Honor, may I inquire about the findings specific to
23 the Northwest Detention Center?

24 THE COURT: I think you can inquire about it.

25

1 BY MR. WHITEHEAD:

2 Q Let's go to page 5 of the document. Looking at the bottom
3 of the first paragraph, do you see that, sir?

4 A Yes.

5 Q Sir, are you aware there was a finding that the Northwest
6 Detention Center used restraints to control segregated
7 detainees during any movement outside their cells?

8 A Yes, there was a recent change to the standard just prior
9 to this.

10 Q Sir, isn't it the case there was a finding this practice
11 violated detention policies and standards, as well as
12 infringing on detainee rights?

13 A I --

14 MR. CALABRESE: Objection to the form of the
15 question. Compound. Assumes a fact not in evidence.

16 THE COURT: Overruled. You may answer.

17 THE WITNESS: That's what the finding says. Doesn't
18 show what our response was and the corroborating detail
19 beyond it.

20 BY MR. WHITEHEAD:

21 Q Sir, I am confident your counsel will come and ask you
22 follow-up questions. For now, I would like for you just to
23 answer my questions which are phrased as yes or no.

24 Understood?

25 A Yes.

1 Q Let's go to page 7 of the document. Sir, isn't it true
2 that -- we have talked about segregation. The findings of
3 the Office of Inspector General weren't limited only to GEO's
4 segregation practices, correct?

5 A They are saying there was other areas mentioned in the
6 report. I believe there are other areas mentioned in the
7 report.

8 Q That's right. Let's go to page 8. Isn't it true that the
9 Office of Inspector General found GEO did not respond to
10 grievances or communications from detainees within the
11 applicable guidelines laid out by the Performance-Based
12 National Detention Standards, correct?

13 A That's what it says.

14 Q In fact, in most cases, GEO took nearly double the amount
15 of time prescribed by the Performance-Based National
16 Detention Standards to respond to detainee grievances,
17 correct?

18 A Let me read that. I don't know if that -- I understand
19 what you are saying. This report was written for many
20 different facilities. Can I have a minute to read it? Can
21 you repeat your question?

22 Q My question to you was: Isn't it the case that the Office
23 of Inspector General for the Department of Homeland Security
24 found that in many cases GEO's response time to detainee
25 grievances was double the amount of time prescribed by the

1 Performance-Based National Detention Standards?

2 A For the time period they looked at for this report.

3 MR. WHITEHEAD: I think we can clear the report.

4 BY MR. WHITEHEAD:

5 Q These findings by the Office of Inspector General, they
6 are the case even though there is an ICE contracting officer
7 on the premises everyday at the Northwest Detention Center,
8 is that the case?

9 A Yes, ICE has a contract officer onsite.

10 Q Right, and GEO was found to be not in compliance in the
11 ways we have just discussed, despite the fact there is a
12 contracting officer from ICE on premises, correct?

13 A That -- yes.

14 Q The findings we looked at, ICE concurred with the Office
15 of Inspector General's findings, correct?

16 MR. CALABRESE: Objection, assumes a fact not in
17 evidence.

18 THE COURT: He can answer if he knows.

19 MR. WHITEHEAD: Let's get 614 back up, please. This
20 will be page 15. Mr. Berger, 18 for you.

21 BY MR. WHITEHEAD:

22 Q Sir, isn't it the case that ICE concurred with the Office
23 of Inspector General's findings about the Northwest detention
24 standard not being in compliance with the Performance-Based
25 National Detention Standards in the ways you have just

1 described?

2 A Says ICE concurred with the described corrective action
3 plan, which explains more about those things for the many
4 different facilities.

5 Q Sir, it is the case that the Northwest Detention Center
6 gets audited or inspected by a number of different government
7 agencies?

8 A Yes.

9 Q Each of those agencies is auditing for compliance with
10 legal requirements for standards that fall within the purview
11 of the auditing authority, correct?

12 A I can agree with that.

13 Q So ICE or DHS don't audit for compliance with the Federal
14 Insecticide, Fungicide and Rodenticide Act, correct?

15 A Well, I am not a federal guy, but those would be specific
16 to those federal agencies.

17 Q Correct. That's the EPA letter we saw earlier in the
18 week, right?

19 A Correct.

20 Q ICE and DHS, they don't audit for compliance with Tacoma
21 health codes, do they?

22 A Not for Tacoma health codes in detail.

23 Q That's right, that's the City of Tacoma that comes in to
24 inspect GEO's kitchen in the way Bert Henderson described for
25 us, correct?

1 A Correct.

2 Q ICE and DHS, they are not charged with enforcing
3 Washington's Minimum Wage Act, are they?

4 A Repeat the question.

5 Q ICE and DHS, they are not charged with enforcing
6 Washington's Minimum Wage Act, correct?

7 A I don't work for -- I know they have made statements about
8 that. I don't know. I can't speak for them.

9 Q Do you harbor any belief that ICE is responsible for
10 enforcing Washington's Minimum Wage Act?

11 A No --

12 MR. CALABRESE: Objection, calls for a legal
13 conclusion.

14 THE COURT: Asks for his belief. The objection is
15 overruled.

16 THE WITNESS: My understanding is that ICE has said
17 that the Washington State Minimum Wage Act does not apply to
18 the contract facility or the voluntary work program.

19 BY MR. WHITEHEAD:

20 Q Well, let talk about that. In business have you heard the
21 phrase, "If it isn't written down, it didn't happen"?

22 A I have heard that.

23 Q What does that mean to you?

24 A Means we should have documentation.

25 Q That's right. As a corporate leader and someone who

1 formerly worked in corporate compliance, you know the
2 importance of written records, correct?

3 A Yes.

4 Q Why is it important to document events?

5 A As I stated, as part of the Performance-Based National
6 Detention Standards, those reports are used to help prove
7 audits and then work towards those corrective action plans.

8 Q Well, I am speaking at a higher level. As a former
9 corporate compliance officer, what is the purpose of
10 documenting events?

11 A To help prove compliance with the required standards.

12 Q That's right. Well, it could be to comply with legal
13 mandates, correct?

14 A Could be.

15 Q It could be to ensure operational consistency?

16 A Could be.

17 Q Could be risk management?

18 A Could be.

19 Q All right. Why is it important to document agreements
20 reached between business partners?

21 A To prove that you are operating in accordance with the
22 contract.

23 Q It is to capture the full understanding of the parties,
24 correct?

25 A I think from the -- my aspect, it goes to the contractor

1 is following the rules of the contract.

2 Q I am talking about documents between business partners.
3 The purpose also is to make sure there is no misunderstanding
4 about what has been agreed to, correct?

5 A I suppose. I am a facility administrator, but I am not --
6 I am the corporate rep here. I think you are speaking way
7 above my level.

8 Q You are testifying on behalf of GEO and you previously
9 stated compensation to detainee workers is a dollar a day,
10 correct?

11 A I may have said that in the past related to the previous
12 standard, which it was a dollar a day before it changed to at
13 least a dollar a day.

14 Q Well, sir, you previously testified, we talked about that
15 special deposition, right, where you were designated by GEO
16 to testify on the company's behalf. Do you recall?

17 A Yes.

18 Q And just like today, you were under oath back then,
19 correct?

20 A Yes.

21 Q Now, previously you testified GEO's complete understanding
22 about the detainee rate of pay is taken from the written
23 contract and the written PBNDs, correct?

24 A I would agree with that.

25 Q Here is how you put it previously, we are going to look at

1 Clip 44. This is page 92, line 9 through 23 of the 30(b)(6)
2 transcript.

3 (Clip 44 played for the jury.)

4 Q We know from your testimony that you never sought guidance
5 from ICE about how much GEO can pay under the voluntary work
6 program. From that same deposition, you described it like
7 this. This is Clip 43, page 102, line 22 through 25.

8 MR. CALABRESE: Your Honor, is this being introduced
9 to impeach this witness in a statement? I am not familiar
10 with what the purpose of this is. We don't want to sit here
11 and watch old videos.

12 MR. WHITEHEAD: This is Rule 32, deposition testimony
13 of a corporate designee being offered for another purpose.

14 MR. CALABRESE: For what purpose? I couldn't hear
15 you.

16 MR. WHITEHEAD: Another purpose as stated in the
17 rule, Rule 32.

18 MR. CALABRESE: Another purpose?

19 Objection, Your Honor.

20 THE COURT: I think it is appropriate.

21 (Clip 43 played for the jury).

22 BY MR. WHITEHEAD:

23 Q So when it comes to the detainee worker rate of pay, what
24 we have in writing is the PBNDS, correct?

25 A Correct.

1 Q And the contract, correct?

2 A Correct.

3 Q One portion of the written contract states GEO is expected
4 to become familiar with all constraints affecting the work to
5 be performed under the contract, correct?

6 A Without looking at the contract, that sounds vaguely
7 familiar.

8 Q Well, let's bring up the contract. Can we get Exhibit
9 129, please. It has been previously admitted. We'll be
10 looking at pages 43 and 44. I am happy to look at the
11 language again. We are at the bottom of page 43. If we
12 could get a blowup of the last two sentences. Even better.
13 We have the language from page 43, which also continues on to
14 page 44. Sir, you have seen this language before, right?

15 A I have.

16 Q You review the contract all the time?

17 A Yes.

18 Q You are familiar and know that GEO is expected to operate
19 under certain constraints?

20 A Correct.

21 Q You also know that GEO is expected to become familiar with
22 the constraints, correct?

23 A Correct.

24 Q It says GEO is expected to become familiar, meaning that
25 the onus is on GEO, correct?

1 A Right, but there are parts in the contract if I have
2 questions it tells me who to go to like the COR.

3 Q We will get to that. Now, the written contract also
4 states that GEO is to be knowledgeable of any changes to the
5 constraints?

6 A Yes.

7 Q That's what it says in writing?

8 A Yes.

9 Q Again, this says the onus is on GEO, not ICE?

10 A That's what that says.

11 Q Now, when we look at the contract on page 44, there are a
12 number of constraints. In particular, let's look at q). The
13 written contract states that GEO must comply with all
14 applicable federal, state and local labor laws and codes.
15 Correct?

16 A I see that.

17 Q Let's look at page 52. Looking at the "ambiguities"
18 section. If there is any question about which standard
19 should apply, the most stringent standard shall apply,
20 correct?

21 A I see that. Says here "ambiguities" directly after the
22 definition portion of the contract.

23 Q I am asking what is written. "The most stringent standard
24 shall apply." Do I have that right?

25 A That's what it reads.

1 Q You told us that the word "shall" is a special word.
2 Means an order, a command?

3 A Yes.

4 Q Here ICE is commanding GEO to act in a certain way,
5 correct?

6 A I can read the contract. Speaks for itself.

7 Q It does. The command is GEO is to apply the highest
8 standard if there is ever a conflict between the standards?

9 MR. CALABRESE: Objection to the use of the word
10 "higher" as a characterization of what this says.

11 THE COURT: Fair objection.

12 MR. WHITEHEAD: It is.

13 BY MR. WHITEHEAD:

14 Q The most stringent standard?

15 A It does say that.

16 Q That's ICE's command to GEO?

17 A In the context of this one sentence in the whole area, but
18 yes.

19 Q Well, you did talk about this second sentence. You told
20 us earlier in the week you found it important in that about
21 the contracting officer; is that right?

22 A Contracting officer, yes.

23 Q I think you testified that if GEO had questions that it is
24 to go to the contracting officer who decides?

25 A Yes.

1 Q Between paying one dollar a day and the state minimum
2 wage, it is obvious which standard is the most stringent,
3 correct?

4 MR. CALABRESE: Objection, Your Honor, form. Nothing
5 obvious.

6 THE COURT: Well, that's the question. The objection
7 is overruled.

8 THE WITNESS: Again, the ambiguity, I mean, highest
9 applicable standard. It talks about the applicable state
10 law. I don't know if that is applicable to us or not. I
11 don't.

12 BY MR. WHITEHEAD:

13 Q Well, sir, we know, again, from your testimony that you
14 did not consult with ICE about how much GEO can pay in the
15 voluntary work program, right? We just saw the clip.

16 A I -- others may have. I, myself, particularly in the
17 position I was in at the time, no. I don't know if anybody
18 else did.

19 Q Well, let's talk about your positions.

20 THE COURT: Just a second, counsel. It is time for
21 lunch. Let's pick this up at 1:00. Please be back ready to
22 go.

23

24

25

AFTERNOON SESSION

OCTOBER 21, 2021

(The following occurred outside the presence of the jury.)

THE COURT: Please be seated. Bring the jury in.

MR. WHITEHEAD: Before we do so.

THE COURT: Don't bring the jury in.

MR. WHITEHEAD: Exhibit 614, the OIG report, I prepared a redacted version. It excludes the names of the other facilities, findings of the other facilities.

THE COURT: Did you give it to opposing counsel?

MR. WHITEHEAD: Yes, Your Honor, I provided a copy to opposing counsel.

MR. CALABRESE: We have been given a copy of what appears to be a redacted copy. We haven't had time to go through the entire document yet. We'll be doing that.

MR. WHITEHEAD: This is a fair objection. I wanted to provide a copy for both the Court and opposing counsel to review. We will be offering the redacted version of 614.

THE COURT: You don't know if that will require more evidence about it.

MR. WHITEHEAD: I don't. I believe a sufficient foundation has been laid both as a rebuttal exhibit --

THE COURT: I was thinking if there is some objection to your blacking out part of the document. What I am saying is I will wait to rule until after defense has had a chance

1 to take a look at it.

2 (The following occurred in the presence of the jury.)

3 THE COURT: Mr. Whitehead, you may continue.

4 BY MR. WHITEHEAD:

5 Q Mr. Scott, before the break, I was about to ask you about
6 one of the previous roles you held. I understand you were
7 GEO's regional director of corporate compliance for a time?

8 A Western regional contract compliance director.

9 Q That was western region contract compliance director?

10 A Director of contract compliance for the western region.

11 Q As director of contract compliance, you didn't have any
12 direct work with ICE in that role, correct?

13 A Not directly. All went through the vice president of
14 contract compliance.

15 Q When it came to the contracting officer, you had no idea
16 about her job description or what she did at the time that I
17 deposed you; is that correct?

18 A Well, I knew what contracting officer -- officer
19 representative does. I don't think that is -- ask that
20 question again.

21 Q Sure. In addition to deposing you as a corporate
22 representative, I also deposed you in your individual
23 capacity. Do you recall that?

24 A I do recall that.

25 Q I think it was back-to-back dates we did it. Does that

1 sound right?

2 A It was awhile ago.

3 Q About two years ago. At that time were the assistant
4 facility administrator, do I have that right?

5 A Time frame sounds about right.

6 Q At that time, you said I don't know the job description or
7 what she does, in relation to the ICE contract officer that
8 was situated at the facility, correct?

9 A I recall touching around that topic. I can't remember
10 exactly what I said at that time.

11 Q Well, we have another clip to show. I would like to
12 direct counsel to page 77, lines 7 and 8 of Mr. Scott's
13 deposition testimony. This is Clip 48.

14 (Clip 48 played for the jury.)

15 Q That's you in the video, correct?

16 A Yes.

17 Q Now, GEO's written contract states that detainee labor
18 shall be used in accordance with the work plan developed by
19 the contractor. Do I have that right?

20 A Sounds correct.

21 Q Let's go back to Exhibit 129. Yes, this is the contract
22 again. Direct your attention to page 82. There is that word
23 "shall" again. See that?

24 A Yes.

25 Q It says, "The detainee work plan must be voluntary and may

1 include work for program assignments for industrial,
2 maintenance, custodial services or other jobs." Let's clear
3 the callout. I want to look at the last sentence of the
4 first paragraph there. There we go. "The detainee work
5 program shall not conflict with any other requirements of the
6 contract and must comply with all applicable laws and
7 regulations."

8 Do you see that?

9 A Yes.

10 Q That word "must," it is like "shall," correct?

11 A Yes.

12 Q An order from ICE to GEO?

13 A Yes.

14 Q Here the order is GEO comply with all applicable laws and
15 regulations as relates to the work program, correct?

16 A Yes.

17 Q I know when we were reviewing that previously with GEO's
18 counsel, the "must comply" language, that was skipped over in
19 your recitation of the contract; is that right?

20 MR. CALABRESE: Objection to the characterization of
21 it being skipped over.

22 THE COURT: Rephrase your question.

23 BY MR. WHITEHEAD:

24 Q I want to move to, let's see, another provision that was
25 looked at here on page 82. Let's look at the last paragraph.

1 In looking at this language, it is a reference to ICE's role
2 to assigning detainee security levels, correct?

3 A I read that as the voluntary work details and
4 classification level, meaning the standards. Whole standard
5 on classification.

6 Q That's right. Certain classification levels have certain
7 restrictions that go with them, correct?

8 A I agree with that.

9 Q This section is talking about ICE's role in the
10 classification levels and that certain classification levels
11 are not permitted or face restrictions in the work they are
12 allowed to do, correct?

13 MR. CALABRESE: Objection, Your Honor, states a fact
14 not in evidence. The sentence does not say that.

15 THE COURT: I think he may answer.

16 THE WITNESS: Would you mind repeating?

17 BY MR. WHITEHEAD:

18 Q Certainly. This clause is in reference to ICE's role when
19 it comes to the classification levels, correct?

20 A It says classification levels. I find this to mean by the
21 section -- the heading of that section to be all applicable
22 to the voluntary work program.

23 Q "In classification level," that's the rest of the clause
24 there, correct?

25 A Right, indicating there are other rules that apply.

1 Q No comma that separates the two -- the sentence there or
2 breaks it apart. It reads as one, talking about voluntary
3 work details and the classification levels and the
4 restrictions that may flow therefrom?

5 A I don't see any restrictions. I -- sole responsibility of
6 ICE to determine whether a detainee will be allowed to
7 perform work on the voluntary work detail and at what
8 classification level.

9 Q A higher classification level may result in restrictions
10 on the work that can be performed, correct?

11 A In accordance with the PBNDS, yes.

12 Q I don't mean to bounce back and forth here. I do want to
13 go back to the first paragraph one other time. I want to go
14 back to the language about GEO must comply with all
15 applicable laws and regulations. Do you see that?

16 A Yes.

17 Q Now, that's in recognition that laws differ from state to
18 state, correct?

19 A State to state, state to government, yes.

20 Q In the State of Washington, the Washington Minimum Wage
21 Act is the law, correct?

22 A Depending if it is applicable or not. I believe it is a
23 law.

24 Q It is GEO that bears the risk of non-compliance with the
25 law, correct?

1 A GEO, by contract extension ICE, I would agree.

2 Q If GEO didn't follow the City of Tacoma's zoning laws,
3 that's on GEO, not ICE, correct?

4 A Yes.

5 Q If GEO doesn't follow the City of Tacoma health standards
6 for kitchen operations, that's on GEO, not ICE?

7 A On GEO, but ICE has a vested interest in the contract. I
8 have to report that kind of information to them.

9 Q If GEO doesn't follow EPA requirements, that's on GEO, not
10 ICE?

11 A Again, EPA, I would say different because EPA, unlike
12 OSHA, can be individual.

13 Q When it comes to paying its employees the minimum wage,
14 that's on GEO, not ICE?

15 A It would be, but I have no knowledge of us not paying any
16 of our employees minimum wage.

17 Q Nothing ICE does prevents GEO from paying more than a
18 dollar a day to detainee workers, correct?

19 MR. CALABRESE: Objection, Your Honor. Form.

20 THE COURT: He may answer.

21 THE WITNESS: ICE could say differently. I can't
22 control what they tell me to do. They can say differently.

23 BY MR. WHITEHEAD:

24 Q I am not asking you to speak to ICE. I don't want you to
25 speak for ICE. My question to you is: Nothing that ICE does

1 prevents GEO from paying more than a dollar a day to detainee
2 workers, correct?

3 A I don't know if I can fully agree with that because ICE
4 issues directives, I have to follow direction of ICE as the
5 contractor. That's kind of assuming, speculating. I can't
6 do that.

7 Q Well, we looked at the contract documents. We looked at
8 the PBNDS. Nothing in writing says contrary?

9 A To specifically?

10 Q That GEO is limited to paying only a dollar a day?

11 A No, we have established a dollar a day, at least a dollar
12 a day. I find those similar. We said GEO can pay more than
13 a dollar a day.

14 Q When it comes to determining whether or not the minimum
15 wage is applicable, that's not GEO's call, is it?

16 A I don't believe so, no.

17 Q It is the Court's?

18 MR. CALABRESE: I'm sorry, I couldn't hear.

19 THE WITNESS: Can you repeat the question?

20 BY MR. WHITEHEAD:

21 Q It is the Court's determination that matters, not GEO's
22 correct?

23 MR. CALABRESE: Objection, Your Honor. There is a
24 jury as well.

25 THE COURT: The objection is sustained.

1 BY MR. WHITEHEAD:

2 Q It is the jury's determination, not GEO's, correct?

3 MR. CALABRESE: Objection, Your Honor. The jury has
4 a job, GEO has a job.

5 THE COURT: The objection is sustained. Calls for a
6 legal conclusion.

7 MR. WHITEHEAD: I have no further questions for this
8 witness, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. CHIEN:

11 Q Mr. Scott, just couple points. I heard you earlier
12 testify about a detainee welfare fund. Do you remember that?

13 A As opposed to the -- the Keefe banking system, the
14 detainee welfare fund.

15 Q When your counsel was asking you about a detainee welfare
16 fund, you were talking about something separate from the
17 Keefe system. Maybe it is not. Were you testifying about
18 the detainee welfare fund?

19 A I do recall talking about a detainee welfare fund.

20 Q You testified that GEO uses the fund to buy exercise
21 equipment, is that right, for the detainees?

22 A Well, I remember that. The detainee welfare fund is
23 connected to the commissary system in accordance with the ACA
24 standards. Any money left over, no profit to GEO there. Any
25 money left over in that or comes through the detainee welfare

1 fund can be used for and has to be used by the accreditations
2 for the detainees, and we have bought exercise equipment
3 through that for detainee use only.

4 Q Exercise equipment. You said you purchase movies with the
5 detainees welfare fund?

6 A Yes.

7 Q Other nice things for the detainees; is that right?

8 A Yes.

9 Q You just testified the welfare fund comes from commissary
10 purchases; is that right?

11 A Yes.

12 Q Detainees make the commissary purchases; is that right?

13 A They do.

14 Q GEO doesn't even buy the exercise equipment, detainees do;
15 is that right?

16 MR. CALABRESE: Objection, mischaracterizes and
17 assumes facts not in evidence.

18 THE COURT: I think it is a fair question.

19 THE WITNESS: It is not entirely true. The exercise
20 equipment on the recreation yards and other stuff has been
21 purchased by GEO. When detainee asks for some stuff and what
22 can be done in the detainee welfare fund for detainees in
23 accordance with the accreditation standards, we do that.

24 BY MS. CHIEN:

25 Q The detainee welfare fund is funded with commissary

1 purchases, though, right?

2 A I don't want so say it is funded by that. The program is
3 very similar to state and federal facilities. If there is
4 money -- if there is any extra money that comes out of the
5 purchase of commissary items, the profit does not go to the
6 contractor operator of the facility. It has to, by standard,
7 go into the detainee welfare fund that is there only to use
8 for detainee purposes.

9 Q Detainees make the commissary purchases; is that right?

10 A They do.

11 Q All right. I think I would like to move on. We have
12 testified about the work program; is that right, quite a bit?

13 A Quite a bit.

14 Q I hear you referring to it as the "federal work program;"
15 is that right?

16 A Operating under a federal contract, with the
17 Performance-Based National Detention Standards, yes.

18 Q You keep referring to it as "ICE's work program;" is that
19 right?

20 A Yes.

21 Q You also testified about detainee grievances about the
22 work program; is that right?

23 A Yes.

24 Q Again, you have been sitting in trial so you have heard
25 Mr. Orlando Marquez's testimony; is that right?

1 A I do recall that.

2 Q He had a grievance about the work program; isn't that
3 right?

4 A I see many grievances. I would not put it past that he
5 has one.

6 Q Just to orient ourselves. I would like to show Exhibit
7 607 which was previously admitted.

8 Q You heard that Mr. Marquez complained about the work
9 program to ICE; isn't that right?

10 A Yes.

11 Q I would like to blow up the last sentence. The response
12 from ICE was this is GEO's issue; isn't that right?

13 A That's what the ICE officer stated. Typically --

14 MS. CHIEN: No further questions.

15 REDIRECT EXAMINATION

16 BY MR. CALABRESE:

17 Q Mr. Scott, a few minutes ago plaintiffs' counsel asked you
18 what do you recall a person that performs work for money? Do
19 you remember that question?

20 A I do.

21 Q Do you know what the state calls its detention facility
22 detainees that work for money?

23 MS. CHIEN: Objection.

24 MR. WHITEHEAD: Leading, argumentative.

25 MS. CHIEN: Motion in limine.

1 THE COURT: Objection is sustained.

2 BY MR. CALABRESE:

3 Q Does the State have detention facilities?

4 MS. CHIEN: Objection.

5 THE COURT: I don't think that is relevant, counsel.

6 MR. CALABRESE: Your Honor, we would like to be heard
7 on that pursuant to your motion in limine order.

8 THE COURT: Well, that's fine. Save it for the next
9 break.

10 MR. CALABRESE: We will.

11 BY MR. CALABRESE:

12 Q Mr. Scott, does the fact Ms. Singleton testified to
13 something make it a fact?

14 A No, it doesn't.

15 Q You heard from her testimony, and you know from your
16 personal experience with her, that her employment was
17 terminated; is that correct?

18 A I do.

19 Q Why was it terminated?

20 A ICE pulled her clearance.

21 Q By pulling her clearance, she was no longer permitted to
22 be on the site?

23 A That --

24 MR. WHITEHEAD: Objection, leading.
25

1 BY MR. CALABRESE:

2 Q What does pulling her clearance mean?

3 A Pulling her clearance, I have to notify the COR and ICE of
4 any activities that might violate the contract. If ICE pulls
5 a clearance, means she can no longer work as part of that
6 contract, which then means I have to terminate her
7 employment.

8 Q Do you know how Ms. Singleton felt about that?

9 A She was not happy about it.

10 Q Ryan Kimble, we were reminded, testified that on an
11 occasion or two more than one job was worked or was allowed
12 by detainees on a particular day. Do you recall that?

13 A I do recall that.

14 Q I believe you wanted to give an explanation of it. What
15 was the explanation?

16 A The barber detainees complained a little bit because based
17 upon the detainee movement schedule I talked about in
18 classification that people can't be in the same place at the
19 same time, the level 3 barbers that worked in those --
20 actually, any barber, based on classification at that time as
21 we saw the annual report, I had a lower number of level 3s at
22 the time. They didn't cut hair every day. They may have cut
23 hair two, three times a month maybe. Maybe once a week.
24 They were saying it is very unfair for them to have a job
25 that they can only earn one dollar a week, per se.

1 We went to ICE and talked to ICE and said, yeah, that
2 doesn't really make sense, let's look at this whole thing.
3 You can have another job where you can make other money. We
4 allowed them to have two positions, so if they worked in the
5 housing unit as a porter, they could do that. They shouldn't
6 have done two details in one day, but I can't sit here and
7 say that possibly never happened. We might have missed that.
8 Typically that is what the barbershop and what ICE allowed
9 two jobs a day to really mean.

10 Q Does that happen any other time?

11 A Typically, doesn't happen any other time because other
12 jobs in the voluntary work program, their schedule permits
13 them to really work as much as we can. We have seen the
14 detainees that work seven days a week because they want to.

15 MR. CALABRESE: Your Honor, GEO reserves its right to
16 object to the OIG report when we complete our review of it.
17 I would like to ask some questions about it, if I may.

18 BY MR. CALABRESE:

19 Q You talked about a report that the OIG issued in --
20 pursuant to a 2019 inspection. I believe the date on the
21 report was July 1, 2020. You saw that report?

22 A I did.

23 Q You are familiar with that report?

24 A Yes.

25 Q Do you know who that report was sent to?

1 A Sent to ICE.

2 Q It was addressed to them with respect to their compliance;
3 is that correct?

4 A Correct.

5 Q The report about the policy putting physical restraints on
6 detainees in detention segregation and their movements, I
7 guess to and from the unit. Can you explain what that was
8 about?

9 A There was a change in the standard where before detainees
10 that were in restricted housing, any time you are in
11 restricted housing, any time you moved outside of your cell,
12 you were placed in hand restraints. The standard changed
13 where automatic placement or placement in restricted housing
14 did not automatically mean restraints were required anymore.
15 It gave some ability for certain detainees maybe not to be
16 restrained if they were in protective custody and didn't have
17 any disciplinary or assaultive behavior to them. Those
18 detainees should not automatically be restrained.

19 In the process of the standard changing and us updating
20 our policy, the OIG found that, we corrected the policy. We
21 created signs for those detainees that were assaultive
22 behavior on the door to make sure we didn't make a mistake
23 and open the door of an assaultive person versus a
24 non-assaultive person. They found that. We corrected that
25 through policy and practice, and we are good now.

1 Q Was ICE aware of the remedial actions and the response?

2 A Yes, we have to provide a corrective action plan to ICE,
3 which states what we are doing in accordance with that
4 finding.

5 Q Did the report contain any audit findings whatsoever
6 pertaining to detainees working in the voluntary work
7 program?

8 A I didn't see any of that in the report that reflected our
9 facility, no.

10 Q Mr. Scott, being the facility administrator of a large
11 facility is much like being the manager of a small city,
12 would you agree?

13 A I would agree with that.

14 Q Do events happen certainly weekly, if not daily that an
15 unannounced audit might pick up?

16 A Nobody says we are perfect.

17 Q Based on your audit experience, is that what audits are
18 for?

19 A Yes.

20 Q Mr. Scott, you were shown a list of constraints that GEO
21 is required to follow. Do you remember that?

22 A I do.

23 Q Constraint small q) called for GEO to follow applicable
24 federal, State and local labor laws. Do you remember that?

25 A I do.

1 Q Is it your understanding that the State's Minimum Wage Act
2 is applicable to the detainee workers in the voluntary work
3 program at the Northwest Detention Center?

4 MS. CHIEN: Objection.

5 MR. WHITEHEAD: Objection, calls for legal
6 conclusion.

7 THE COURT: Sustained.

8 BY MR. CALABRESE:

9 Q Have you been told by anyone that the State Minimum Wage
10 Act is applicable to the detainees at the center?

11 MR. WHITEHEAD: Objection, calls for hearsay.

12 THE COURT: Sustained. I expect you're excluding --
13 well, never mind. Go ahead.

14 BY MR. CALABRESE:

15 Q Does the State's Minimum Wage Act apply, in your opinion,
16 to the detainees working in the program?

17 MS. CHIEN: Objection.

18 MR. WHITEHEAD: Objection, calls for legal
19 conclusion.

20 THE COURT: This calls for his opinion. I don't know
21 if he is speaking as an individual or as a representative of
22 the company at this point, which may make a difference as to
23 that objection. Whose opinion are you asking for?

24 MR. CALABRESE: I am asking for his opinion as a
25 corporate representative.

1 MR. WHITEHEAD: Same objection, Your Honor.

2 THE COURT: The objection is sustained.

3 MR. CALABRESE: I will ask you in your personal
4 opinion.

5 BY MR. CALABRESE:

6 Q Does the State's Minimum Wage Act, in your personal
7 opinion, apply to the detainees in the voluntary work program
8 at the Northwest Detention Center?

9 A No, I never seen it in any program like ours.

10 Q Plaintiffs' counsel asked you if ICE had said that the
11 State's Minimum Wage Act applied to the detainees in the
12 voluntary work program at the center. Do you remember that
13 question?

14 A I do.

15 Q He also asked you -- he also said to you, "Nothing in
16 writing from ICE that says otherwise." He asked you if that
17 wasn't true that had you nothing in writing from ICE that
18 says otherwise?

19 A I remember him saying that.

20 Q What's your understanding of ICE's position on this issue?

21 MS. CHIEN: Objection.

22 MR. WHITEHEAD: Objection.

23 THE COURT: The objection is sustained.

24 BY MR. CALABRESE:

25 Q Do you have an understanding of ICE's position on this

1 issue?

2 MS. CHIEN: Same objection.

3 MR. WHITEHEAD: Same objection.

4 MR. CALABRESE: Your Honor, may we be heard?

5 THE COURT: I am going to excuse you for a minute,
6 while we deal with this folks. Take a short break.

7 (The following occurred outside the presence of the jury.)

8 MR. CALABRESE: Your Honor, the first issue we wanted
9 to clarify with you came from your order on motions in
10 limine, Docket 568, that was filed September 28th, 2021. The
11 State of Washington had made additional motions in limine in
12 advance of the October 12th retrial. They asked you to
13 exclude all evidence of work programs at state and local
14 government facilities. Your Honor wrote, with that ruling,
15 you said, "It is clear that the defense of intergovernmental
16 immunity is out of the case." You said with that ruling,
17 "Comparison of the voluntary work program operated by GEO
18 with the State of Washington's voluntary work programs for
19 immunity comparisons," set off by commas, "is also out of
20 this case. To that extent, the State's motion should be
21 granted. Like other issues in this case, implementation of
22 this ruling can better be handled at trial."

23 We are not attempting to introduce testimony about the
24 State's detention facilities and the practices there with
25 respect to the work programs where they have admittedly paid

1 about a dollar a day. That would be improper for us to
2 introduce for intergovernmental immunity defense arguments.
3 The Court left open the door for us to introduce that
4 testimony for other purposes.

5 THE COURT: What is the other purpose? I didn't
6 think it was relevant.

7 MR. CALABRESE: The other purposes would be to
8 prepare or to establish what the general practices here in
9 the State of Washington are with respect to work programs for
10 detainees, including civil detainees in a sex offender
11 institution. It is a very close and comparable situation.
12 Civil detainees, civil detainees; in a work program, in a
13 work program. One is exempt, one is not.

14 We are not offering it for intergovernmental immunity
15 purposes, but for purposes of making -- allowing the jury to
16 understand what the practices are with respect to corrections
17 and detention in the State of Washington, it is absolutely
18 relevant.

19 We tried to get Mr. McHatton, who had a 30-year career
20 with the State Department of Corrections, to testify about
21 this, and he was not allowed on an objection. We have held
22 off until now to try to clarify this because it is so
23 important for us to be able to put on full and fair
24 defense.

25 MS. CHIEN: Your Honor, for the State of Washington,

1 what DOC facilities do is irrelevant. The motion in limine
2 that GEO counsel itself has filed excluding evidence of
3 any -- of work programs across the country, so it makes no
4 sense for GEO to argue out of one side of its mouth that
5 other -- what is happening in other facilities is irrelevant,
6 while it matters to show the industry standard at DOC.

7 It doesn't matter. The requirement under the minimum wage
8 is whether or not employees at this facility are permitted to
9 work. DOC is different from a private company. We have
10 established that through four years of briefing. No reason
11 for it to be coming in at this moment. It will confuse the
12 jury and prejudice our side.

13 MR. CALABRESE: Nothing could be further from the
14 truth.

15 THE COURT: Hold on just a minute.

16 MR. WHITEHEAD: I'll keep it brief. I don't have
17 much to say.

18 Your Honor, it is not relevant. The law is different.
19 The standards are different and 403.

20 MR. CALABRESE: Your Honor, GEO has not, to my
21 knowledge, filed a motion in limine to block the introduction
22 of this sort of evidence about what other facilities around
23 the world, let alone the United States, do with respect to
24 work programs. There is not, I repeat, there is not a single
25 facility in the world where minimum wage is paid to detainees

1 or prisoners working in institutional work programs. We have
2 not filed such a motion. We would welcome the introduction
3 of that evidence in volumes. That was an inappropriate and
4 incorrect statement by the State.

5 THE COURT: This goes back to your famous *Ndambi* case
6 where the court said, I think as dicta and as an aside, that
7 the reason the Fair Labor Standards Act contains no express
8 exception for prisoners is probably that the idea was too
9 outlandish to occur to anyone when the legislation was under
10 consideration by Congress.

11 You know, that's partly what this is about. You can't
12 prove or disprove the issues in this case by what is
13 happening around the country. There are many cases, as you
14 refer, that have come out different. None of which that I
15 know of are directly on all fours with this case. I don't
16 think it is relevant. I don't think it is relevant.

17 MR. CALABRESE: I believe your ruling allowed an open
18 door for us to introduce testimony about what other
19 facilities do.

20 THE COURT: The door is open for relevant testimony.
21 I don't think what you have offered, what you have asked
22 about is relevant to the issues in this case.

23 MR. CALABRESE: Is there relevance at all in your
24 opinion with respect -- we won't waste time bringing back
25 other witness who is will testify as to what the State's

1 practices are with respect to their programs. It is either
2 relevant or it is not. We believe --

3 THE COURT: It is not relevant.

4 MR. CALABRESE: It is not relevant?

5 THE COURT: Not relevant.

6 MR. CALABRESE: Are you ruling there is no basis for
7 us to introduce that testimony? We need this for our record.

8 MR. WHITEHEAD: They are asking for a prospective
9 ruling here. The evidence before the Court right now is such
10 that it is clearly not relevant. Also for purposes of
11 clarifying the record, because the record does matter, GEO
12 did, in fact, move to exclude evidence related to pay rates
13 in other facilities. This before Mr. Calabrese's time on the
14 case. Looking at Docket 256, GEO did, in fact, move on that
15 basis. This is a goose versus gander issue.

16 MR. CALABRESE: Your Honor, we are asking for your
17 clarification with respect to your ruling.

18 THE COURT: Let me give you a little more
19 clarification.

20 There are many rulings that are ripe for appeal that I
21 have made in this case before you ever came into it --

22 MR. CALABRESE: Yes.

23 THE COURT: -- that still are part of the rulings in
24 the case. This is one of them. I left the door open for
25 relevant evidence.

1 What you have proposed, in my judgment, is not relevant to
2 the issues in this case. You talked about keeping our eye on
3 the rabbit. This ain't the rabbit.

4 MR. CALABRESE: I believe the jury would feel very
5 differently if they got a look at this rabbit. I think they
6 would chase it right down the rabbit hole.

7 THE COURT: Well, the rabbit would get away.

8 MR. CALABRESE: May I be heard on the second issue we
9 have come up against in the testimony?

10 THE COURT: What is that now?

11 MR. CALABRESE: Plaintiffs have opened a door widely,
12 not a crack, but widely, with respect to whether or not we
13 can introduce the government's statement of interest in this
14 case.

15 Listen to what was asked, Mr. Whitehead asked this witness
16 if ICE had said that the State's Minimum Wage Act applied to
17 the detainees in the program at the center.

18 He also said to him, "You have nothing in writing from ICE
19 that says otherwise." When in fact, he does. He should be
20 permitted to introduce that testimony, and we should be
21 permitted, under the same hearsay 803(8) whatever it is
22 exception the State used or plaintiffs used. We should be
23 able to introduce that statement of interest at this time.
24 He should be able to testify that the federal government is
25 on record in this case saying that the Minimum Wage Act of

1 Washington does not, in fact, apply.

2 We will redact the whole thing from IGI issues. We are
3 not asking the jury take it into the jury room with them. We
4 think they need to hear what the government had to say about
5 this. This is the way to do it. They opened the door for us
6 to introduce this testimony.

7 MS. CHIEN: We would disagree. The statement of
8 interest is also legal argument. It is not testimony. It is
9 not evidence. The Court gets to instruct the jury as to what
10 the law is, not the U.S. Government via a statement of
11 interest filed on this docket. Obviously, we would oppose
12 introduction of an ECF filing by the U.S. Government.

13 MR. WHITEHEAD: Nothing further to add. Well said.

14 MR. CALABRESE: Your Honor --

15 THE COURT: I have to reread it. I would have to
16 reread it to see if it is admissible.

17 MR. CALABRESE: We have it. I would only say that we
18 are not attempting to submit it for the purposes of
19 suggesting that the jury be instructed this is the law. Just
20 simply to go along with the testimony that was essentially
21 solicited from this witness by plaintiffs with respect to
22 what he understands the government to have said or not said.
23 Here is a copy.

24 MR. WHITEHEAD: What is the docket number?

25 THE COURT: Docket No. 290. We will come back to

1 that.

2 MR. CALABRESE: Okay.

3 THE COURT: This raises some other questions as to
4 whether this is impeaching your own witness as to what he has
5 already said about his knowledge and, of course, whether
6 there is a particular statement authorized by the government.

7 MR. CALABRESE: Your Honor, with respect to those two
8 points. His knowledge came after that video clip, number
9 one. Number two, we have asked for the Court to consider
10 this under the 803(8) exception as well as under Rule 201,
11 which we will be prepare --

12 THE COURT: I'm sorry, I am not hearing you.

13 MR. CALABRESE: The information that he would testify
14 to about this statement was learned by this witness after
15 that video clip. I am not impeaching him with it. I am just
16 asking him to supplement what he knows.

17 We are introducing it under the hearsay exception 803(8).
18 We will also be pleased to brief it under Rule 201 and
19 reserve the right to do so, but would prefer to do that in
20 writing.

21 THE COURT: What was the last?

22 MR. CALABRESE: Rule 201.

23 MR. WHITEHEAD: Judicial notice.

24 MR. CALABRESE: Yes.

25 THE COURT: Oh, sure.

1 MR. WHITEHEAD: Your Honor --

2 THE COURT: If it is front and center in your mind,
3 can you refer me specifically to what the statement is here
4 that you would --

5 MR. CALABRESE: I think if you flip through, it is a
6 little bit past the middle. I highlighted a couple things
7 that I was going to read, but I am not telling you those are
8 the only parts in the statement that I would want to refer
9 to. Just the ones that caught my eye at lunch.

10 MR. WHITEHEAD: Your Honor, what I would say also,
11 just adding to that, number one, this is a hearsay document.
12 It is certainly not a public record. This is a litigation
13 document prepared by counsel. As such, it is not evidence in
14 the case.

15 THE COURT: Okay. Let me take a look at it.

16 MS. CHIEN: Counsel, can you tell us what you
17 highlighted so we can also look?

18 MR. CALABRESE: Again, I am not sure that is all I
19 would look at. I think -- where was I? Maybe page 12, 13.
20 I am not sure entirely.

21 THE COURT: I don't know. Here is the copy with
22 highlights.

23 Anything further outside the presence of the jury?

24 MR. CALABRESE: Sorry?

25 THE COURT: Anything further outside the presence of

1 the jury?

2 MR. CALABRESE: No, just a couple brief questions
3 with the jury.

4 THE COURT: Okay. Bring the jury in.

5 (The following occurred in the presence of the jury.)

6 THE COURT: All right. You may continue.

7 MR. CALABRESE: Thank you.

8 BY MR. CALABRESE:

9 Q Really, just one more issue, Mr. Scott. I would like to
10 bring back up Exhibit 129, page 82 that we were looking at a
11 little while ago with plaintiffs' counsel. Earthquake
12 issues? There we go. If you can enlarge -- blow up the last
13 paragraph on the page. Thank you.

14 If the jury can look at that as well. Mr. Scott, you
15 were asked if this sentence was really about classifications.
16 Read that sentence, will you please?

17 A "It will be the sole responsibility of ICE to determine
18 whether a detainee will be allowed to perform on voluntary
19 work details and at what classification level."

20 Q Before we get to the "and" in that sentence, it is pretty
21 clear that ICE has the sole responsibility to determine
22 whether detainees will be allowed -- sounds like permitted --
23 to perform on voluntary work details; is that correct?

24 MS. CHIEN: Objection.

25 MR. WHITEHEAD: Objection.

1 THE COURT: Well, technically, that misstates --

2 MR. CALABRESE: I will rephrase.

3 THE COURT: The objection is sustained.

4 MR. CALABRESE: I will rephrase.

5 BY MR. CALABRESE:

6 Q Who has the sole responsibility in this section with
7 respect to the determination of whether detainees will be
8 allowed to perform on voluntary work details?

9 A ICE.

10 Q And what other authority sole responsibility does ICE
11 retain with respect to that performance allowance?

12 A Can you repeat the question?

13 Q No. No way.

14 What other responsibility does ICE retain sole
15 responsibility for with respect to classification levels?

16 A That we follow the Performance-Based National Detention
17 Standards and the contract.

18 MR. CALABRESE: Thank you. No further questions.

19 MR. WHITEHEAD: No further questions.

20 MS. CHIEN: No further questions.

21 THE COURT: Thank you, Mr. Scott. You may step down.

22 MR. NEGRON: Your Honor, the defense would call
23 Joshua Grice.

24 THE COURT: If you will remove your mask, raise your
25 right hand and be sworn.

1 JOSHUA GRICE,

2 having been sworn under oath, testified as follows:

3 THE COURT: Please be seated here to my right. Speak
4 into this mic, and keep your voice up, if you will, please.

5 DIRECT EXAMINATION

6 BY MR. NEGRON:

7 Q Good afternoon, sir.

8 A Good afternoon.

9 Q My name is Joe Negron. I represent the GEO Group.

10 Would you please state and spell your name for the
11 jury, please?

12 A Sure. Joshua Grice, J-O-S-H-U-A, G-R-I-C-E.

13 Q And who do you work for, Mr. Grice?

14 A The Washington State Department of Labor & Industries.

15 Q Approximately when did you start?

16 A I started with L&I in July of 2017.

17 Q What is your position, sir, with Washington Labor &
18 Industries?

19 A My current position is employment standards program
20 manager.

21 Q In that position, Mr. Grice, are you responsible for
22 enforcement of the Washington Minimum Wage Act?

23 A Yes.

24 Q Have you, in fact, be designated as the speaking agent for
25 the Department of Labor & Industries of the State of